

FILED

MAR 17 2006 **NE**
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
MICHAEL W. DOBBINS EASTERN DIVISION
CLERK, U.S. DISTRICT COURT

KATHY KELLY, as mother and next friend for **DEREK KELLY**, a minor

Plaintiff,

VS.

**BOARD OF EDUCATION OF
MCHENRY COMMUNITY HIGH
SCHOOL DISTRICT 156 and individual
members of the Board of Education,
MARY KAY LOSCH, LORI NELSON,
DEBORAH JACOBS, THOMAS
WAGNER, DAVID BOGER, DIANE
VIDA, and BOB GLASCOTT, JR.**

Defendants.

NOTICE OF REMOVAL

Defendant Board of Education of McHenry Community High School District 156 (the "Board"), pursuant to 28 U.S.C. §§ 1441 and 1446, submits this Notice of Removal of this lawsuit to the United States District Court for the Northern District of Illinois, Eastern Division (the "Court"), and states:

1. On February 21, 2006, a lawsuit was filed by Plaintiff Kathy Kelly ("Plaintiff"), on behalf of Plaintiff's son, Derek Kelly, against the Board in the Circuit Court for the Nineteenth Judicial Circuit, McHenry County, Illinois, and designated as Case No. 06-CH-176 (the "Lawsuit").

2. Plaintiff's Complaint alleges that the Board has deprived Plaintiff's son "of his interest in education, his due process as set forth in the 14th Amendment of the U.S. Constitution,

and his right to freely associate as set forth in the First Amendment of the U.S. Constitution.” (Compl. at 2).

3. For purposes of removal of this action from state court, this is an action where the plaintiff alleges violations of federal law. Thus, this Court has federal question jurisdiction over this action under 28 U.S.C. § 1331 because it arises under the laws of the United States, and it may be removed to this court pursuant to 28 U.S.C. § 1441(a).

4. The Board was served with a copy of the Complaint on February 21, 2006.

5. Fewer than 30 days have passed since the Board was served with Plaintiff's Complaint. Therefore, the deadline for filing this Notice of Removal has not expired.

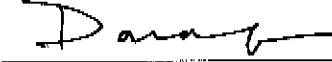
6. This Notice is accompanied by copies of the process, pleading, and orders served upon Defendants in this action, all of which are attached as Exhibit A.

7. A copy of this Notice of Removal will be filed in the Circuit Court for the Nineteenth Judicial Circuit, McHenry County, Illinois.

WHEREFORE, Defendant Board of Education of McHenry Community High School District 156 notifies the Court of the removal of this action from the Circuit Court for the Nineteenth Judicial Circuit, McHenry County, Illinois to the United States District Court for the Northern District of Illinois, Eastern Division.

Respectfully submitted,

BOARD OF EDUCATION OF MCHENRY
COMMUNITY HIGH SCHOOL DISTRICT 156

By: 
One of Its Attorneys

Julie Heuberger Yura
Donald Y. Yu
FRANCZEK SULLIVAN P.C.
300 South Wacker Drive
Suite 3400
Chicago, Illinois 60606
(312) 986-0300

Dated: March 17, 2006

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 17th day of March, 2006, by depositing a copy of the same in the United States mail, first class, postage prepaid and properly addressed to the following:

Baumann & Shuldiner
79 W. Monroe, Suite #900
Chicago, Illinois 60603



Donald Y. Yu

FILED**IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT FEB 21 2006
MCHENRY COUNTY, ILLINOIS**VERNON W. KAYS, JR.
MCHENRY CTY. CIR. CLK.KATHY KELLY, as mother and next friend for
DEREK KELLY, a minor,

Plaintiff,

-v-

BOARD OF EDUCATION OF MCHENRY
COMMUNITY HIGH SCHOOL DISTRICT 156
and individual members of the Board of Education,
MARY KAY LOSCH, LORI NELSON, DEBORAH
JACOBS, THOMAS WAGNER, DAVID BOGER,
DIANE VIDA, and BOB GLASCOTT, JR.

Defendants.

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Case No. 06 CH 176
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BY ADMINISTRATIVE OFFICER
THIS CASE IS HEREBY SET FOR A HEARING
CONFERENCE IN COUNTROOM 1320 ON
1/15 2006, AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.**COMPLAINT**

NOW COMES THE PLAINTIFF, through her attorneys, BAUMANN & SHULDINER, and complains of the Defendants, and each of them, as follows:

1. THE BOARD OF EDUCATION OF MCHENRY COMMUNITY HIGH SCHOOL DISTRICT 156 is located at 4716 W. Crystal Lake Road, McHenry County, IL 60050 is an agency with quasi-judicial function.
2. Defendants MARY KAY LOSCH, LORI NELSON, DEBORAH JACOBS, THOMAS WAGNER, DAVID BOGER, DIANE VIDA, and BOB GLASCOTT, JR. are decision making members of the Board of Education.

COUNT I**PETITION FOR A WRIT OF CERTIORARI**

3. On January 12, 2005, a Hearing Officer for the Board of Education held a conference to discover facts related to a charge against Derek Kelly for violating policy 8.21 of School District

156 against "gang activity" that prohibits, "any act in furtherance of a gang and possession or use of gang symbols, such as drawings, hand signs, or attire."

4. It was alleged that Derek Kelly's drawing of a crown on his class agenda violated school policy. Derek's charge alleges two violations of the schools gang policy, prior to this incident. The first incident involved a drawing of a "T" in the shape of a pitchfork on Derek's assignment; the other incident involved a crown drawn on a piece of Derek's art work.

5. On January 18, 2006, the Board of Education sent a letter to Kathy Kelly informing her that Derek is expelled for the remainder of the school year. This was a final decision from the Board, and the expulsion is arbitrary, capricious, and unreasonable.

Plaintiff, Kathy Kelly, respectfully petitions for a writ of certiorari to review the decision of the Board of Education in this case, and for reversal and remand of the Board's decision.

COUNT II

PETITION FOR ORDER OF MANDAMUS

6. All paragraphs 1 - 5 are realleged herein as if alleged in this Count II.

7. Defendants, and each of them, by expelling Derek, have deprived him of his interest in education, his due process as set forth in the 14th Amendment of the U.S. Constitution, and his right to freely associate as set forth in the First Amendment of the U.S. Constitution.

8. On January 18, 2006, the Board of Education considered evidence related to Derek's alleged violation of Board policy 8.21 related to gang activity. At this meeting, the Board made a final decision to expel Derek Kelly holding that the symbol of a crown drawn on Derek's class agenda constituted a violation of policy 8.21 which prohibits, "any act in furtherance of a gang and possession or use of gang symbols, such as drawings, hand signs, or attire." No evidence was presented to indicate that drawing a symbol, on paper in Derek's personal possession, was in

furtherance of gang related criminal activity.

WHEREFORE Plaintiff requests the Court to enter an Order of Mandamus Commanding Defendants to rescind their decision to expel Derek and reinstate his status as a student at McHenry Community High School.

COUNT III
42 U.S.C. SECTION 1983

9. All paragraphs 1-8 are realleged as if alleged herein in this Count III.
10. The School Board and its individual members act as a body of the state acting under the color of its policies. In particular, the Board, acting under Board policy 8.21, has substantially deprived Derek Kelly of rights secured by the U.S. Constitution as follows.
11. Derek Kelly is entitled to freedom of association under the First Amendment of the U.S. Constitution.
12. Defendants' decision to expel Derek due to drawing a symbol allegedly related to a gang called the "Latin Kings," deprives him of his freedom of association under the First Amendment of the U.S. Constitution.
13. Derek Kelly has a right not to be subject to unreasonable search and seizure of property in his possession, under the 4th Amendment.
14. A class room supervisor took an agenda in Derek's possession with a drawing of a crown and thereby violated Derek's right not to be subject to unreasonable search and seizure.
15. Derek Kelly has a right to due process under the 14th Amendment of the U.S. Constitution.
16. Plaintiff was informed of Derek's expulsion hearing six days prior to the hearing, giving Plaintiff very little time to prepare or obtain legal counsel violating Derek's right to due

process under the 14th Amendment of the U.S. Constitution.

WHEREFORE plaintiff respectfully requests that this Court award to her and against each of the Defendants:

- A. Nominal damages;
- B. Compensatory damages;
- C. Punitive damages;
- D. Reasonable attorneys' fees pursuant to Section 1988 of Title 42 of the United States Code;
- E. Such other and further relief as this Court shall deem just and proper.

COUNT IV

INJUNCTIVE RELIEF

- 17. All paragraphs 1-16 are realleged as if alleged herein
- 18. The Defendants, and each of them, by expelling Derek Kelly for the remainder of the semester, have deprived Derek of his property interest in public education, and violated Constitutional rights under the First, Fourth, and Fourteenth amendments as alleged in paragraphs 11-16 above. These rights require this Court's protection.
- 19. Plaintiff has no adequate remedy at law to protect him from being deprived of his interest in public education.
- 20. Derek is a poor student, struggling with his grades. Derek is a reclassified freshman in high school. Any further delay in his education, due to suspension, would cause irreparable harm.
- 21. Due to the arbitrary, capricious, unreasonable expulsion in light of the non-threatening nature of Derek's drawings, there is a strong likelihood of success on the merits of this

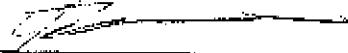
case.

WHEREFORE, Plaintiff seeks an order from this Court enjoining the Board of Education from enforcing its decision to expel Derck.

WHEREFORE Plaintiff seeks all remedies as described above, costs, and attorneys fees.

Baumann & Shuldiner, #71071
79 W. Monroe, Ste #900
Chicago, IL 60603
312-372-8242

Respectfully submitted,



Riaz Zaman

By: One of Plaintiff's Attorneys

VERIFICATION PAGE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters stated to be on information and belief and as to such matters the undersigned certifies that he [or she] believes the same to be true.



Signature / Certification
Date: February 21, 2006

SUMMONS - 30 DAY
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

(Name all parties)

Plaintiff(s)

KATHY KELLY, as mother and next friend for
DEREK KELLY, a minor

Case Number

06 CH 176

vs.

Amount Claimed \$

BOARD OF EDUCATION OF MCHENRY COMMUNITY HIGH
SCHOOL, et. al.

Defendant(s)

SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this court, McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois, 60098, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

(SEAL)

WITNESS

FEB 21 2006

20

Clerk of the Circuit Court

Plaintiff's attorney or plaintiff if he is not represented by an attorney

Name Paul R. Shuldiner

Prepared by _____

Attorney for Plaintiff _____

Attorney for _____

Address 79 W. Monroe, Ste #900

Attorney Registration No. 03126403

City, State Zip Chicago, IL 60603

Deputy Joseph Pistone

Telephone 312-372-8242

3-2-06

CV-SUM9 2/8/01

SERVICE LIST
KELLY V. BOARD OF EDUCATION

**BOARD OF EDUCATION OF MCHENRY
COMMUNITY HIGH SCHOOL DISTRICT 156**
Mary Kay Losch, President of the Board of Education
4716 W. Crystal Lake Road
McHenry County, IL 60050

MARY KAY LOSCH
4716 W. Crystal Lake Road
McHenry County, IL 60050

LORI NELSON
4716 W. Crystal Lake Road
McHenry County, IL 60050

DEBORAH JACOBS
4716 W. Crystal Lake Road
McHenry County, IL 60050

THOMAS WAGNER
4716 W. Crystal Lake Road
McHenry County, IL 60050

DAVID BOGER
4716 W. Crystal Lake Road
McHenry County, IL 60050

DIANE VIDA
4716 W. Crystal Lake Road
McHenry County, IL 60050

BOB GLASCOTT, JR.
4716 W. Crystal Lake Road
McHenry County, IL 60050

FILED

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NF

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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EASTERN DIVISION

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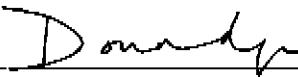
) 06CV1512
JUDGE KOCORAS
MAGISTRATE LEVIN

To: Baumann & Shuldiner
79 W. Monroe, Suite #900
Chicago, Illinois 60603

Please take notice that on the 17 day of March, 2006, a Notice of Removal of this action from the Circuit Court for the Nineteenth Judicial Circuit, McHenry County, Illinois, was filed with the United States District Court for the Northern District of Illinois, Eastern Division. Copies of the Notice and a Certificate of Filing in State Court are served upon you with this Notice.

Respectfully submitted,

BOARD OF EDUCATION OF MCHENRY
COMMUNITY HIGH SCHOOL DISTRICT 156

By: 
One of Its Attorneys

Julie Heuberger Yura
Donald Y. Yu
FRANCZEK SULLIVAN P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
(312) 986-0300

Dated: March 17, 2006

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Donald Y. Yu